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No. 11,952

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IN THE  
United States Court of Appeals  
FOR THE NINTH CIRCUIT

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WAIALUA AGRICULTURAL COMPANY, LIMITED,  
A Corporation,

Appellant,

*versus*

CIRACO MANEJA, ET AL.,

Appellees.

and

CIRACO MANEJA, ET AL.,

Appellants,

*versus*

WAIALUA AGRICULTURAL COMPANY, LIMITED,  
A Corporation,

Appellee.

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*On Appeal from the District Court of the United States  
for the District of Hawaii.*

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**BRIEF FOR AMERICAN SUGAR CANE LEAGUE OF  
UNITED STATES OF AMERICA, INC.**

*As Amicus Curiae.*

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**BRIEF FOR AMERICAN SUGAR CANE LEAGUE OF  
THE U.S.A., INC. AS AMICUS CURIAE.**

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**STATEMENT**

On motion duly made, the American Sugar Cane League of the U. S. A., Inc. (hereinafter referred to as the American Sugar Cane League) was granted leave by this court on October 26, 1948 to file a brief as *amicus curiae* herein.

The American Sugar Cane League is a nonprofit association organized under the laws of the State of Louisiana. Its members, all of whom are located in the State of Louisiana, are (1) growers of sugar cane or farmers, and (2) processors of sugar cane into sugar and molasses. There are presently in Louisiana 57 plants engaged in processing sugar cane into sugar and molasses, and approximately 10,000 growers who plant, cultivate and harvest sugar cane which is processed in such plants into sugar and molasses.

The American Sugar Cane League appears herein as *amicus curiae* because its members will be vitally affected by the results of this litigation. This is so because in many respects the operations of sugar cane growers and processors in Louisiana are substantially identical with those of the appellant, Waialua Agricultural Company, Limited. The members of the American Sugar Cane League therefore have a real interest in the determination of the correct interpretation of the Fair Labor Standards Act (herein called the Act), and especially section 3(f), 7(c), and 13(a) (6).

A portion of the sugar cane processed into sugar and molasses in Louisiana is grown or produced by the processors on farms or plantations owned and operated by them. These plantation or farm operators are growers or farmers as well as processors. The remaining sugar cane is produced by independent growers and is delivered and sold to the processors, the price being established by determinations of fair and reasonable prices issued by the Secretary of Agriculture of the United States under the provisions of the Sugar Act of 1948 (formerly Sugar Act of 1937).

### ***Activities of Sugar Cane Growers in Louisiana***

In Louisiana, freezing temperatures occur from December to March killing the growth above ground during that period. The cane sprouts again in March or April. The crop harvested each year is composed in part of "stubble" cane which is the new growth from the cane harvested the preceding year, and in part of "plant" cane which is the first crop from planted seed cane.

On the various sugar cane farms and plantations in Louisiana, the growers are engaged during the entire year in one or more of the following operations: preparing land for the planting of sugar cane; growing leguminous crops preparatory to planting sugar cane; cultivating sugar cane; applying fertilizer; digging and maintaining ditches used to drain the cane fields; and harvesting sugar cane. The growers maintain and keep in repair dirt and gravel roads on their farms and plantations, over which they transport by truck agricultural laborers, supplies and equipment throughout the year to and from the cane fields. During the harvesting period the growers transport sugar cane to the processing mills over these roads. Such transportation of sugar cane to the mills, except as will appear below, takes place by truck. Maintenance and repair work on the said roads on the farm or plantation is rather constant.

Each large plantation operates a shop which is used for prompt repairs and emergency work on agricultural equipment and machinery used on the plantation in the growing of sugar cane.

### ***Activities of Sugar Cane Processors in Louisiana***

As already explained the processors also grow sugar cane. The cane which they process is both that which



they grow and that grown by other farmers. Some of these processors individually, own, operate and keep in a state of good repair a narrow gauge railroad over which they transport to their mill the sugar cane which they process. The repair work on the railroad facility takes place either at the site of the railroad or in the repair shop referred to below.

Each mill grinds and processes sugar cane into sugar and molasses. The sugar is immediately bagged and in most cases it is immediately loaded for shipment and shipped to market by trucks or by rail. In some cases however, due to limited shipping facilities, bagged sugar is stored temporarily in space especially provided for that purpose at the mill, and is thereafter shipped to market. The molasses upon its production is loaded in tank cars for immediate shipment or pumped into large storage tanks located in or near the mill for future shipment.

Sugar cane is extremely perishable and starts to deteriorate almost immediately after harvesting and, therefore, must be processed promptly at the mills. Further, after being subjected to freezing temperature, sugar cane commences to deteriorate rapidly. In Louisiana because the sugar cane does not mature prior to October, and because freezing temperatures usually occur in December, the harvesting and processing season is by nature normally restricted to a period of from seventy to ninety days. These climatic conditions and conditions inherent in the sugar cane make it imperative that the processing operations be conducted continuously twenty-four hours each day seven days each week during the harvesting season.

In the course of processing, the sugar cane is



crushed and when all recoverable juice is extracted there remains a comparatively dry fiber which is called "bagasse". The bagasse is used in most instances for boiler fuel to produce steam to drive engines and other equipment of the processing plant; to heat and evaporate the juices and to crystallize sugar; and to generate electric power needed in the processing plant in the course of processing.

The sugar cane processor maintains and keeps in good repair the equipment and other facilities used in the cane processing operations, in bagging sugar and in storing, loading and shipping sugar and molasses. This work is usually done in the mill building proper, but in some cases it is done in a nearby shop which is part of the processing plant. Such shop may or may not be the same shop as the one at which the processor repairs the agricultural equipment and machinery used in his growing operations and which is referred to above.

### **ARGUMENT**

- I. Employees Of Sugar Cane Growers Are "Employed In Agriculture" Within The Meaning Of Section 3(f) Of The Fair Labor Standards Act And Therefore Are Exempt From The Wage And Overtime Provisions Of The Act As Provided By Section 13(a)(6) When They Are Engaged In Any Activity Involved In The Growing And Harvesting Of Sugar Cane And Delivery Of Cane To The Processing Mill.***

It is difficult to determine from the court's decision (R. 410-437) precisely which activities of a sugar cane plantation it held to be non-exempt. However, when such decision is read in the light of the court's judgment (R. 440-445) and the facts that are detailed in

the Stipulation of the Parties (R. 129-256), it would appear that the court below held that the agricultural exemption does not apply to employees of sugar cane growers engaged in the follow activities: digging and maintaining ditches used to drain the cane fields; transportation by truck, over field roads on the farm, of agricultural laborers, supplies and equipment; transportation by narrow gauge railroad or truck of sugar cane from the cane fields on the farm to the processing mill; maintaining and repairing field roads on the farm; repairing on the farm the agricultural machinery and equipment used thereon in connection with the growing of sugar cane.

We submit that these holdings of the lower court are in error and that all such activities performed by the farmer are within the agricultural exemption provided by the Act. This is shown by the language of the exemption provision, its legislative history, the judicial decisions dealing with the exemption provision and the administrative interpretations thereof.

The statutory definition of "agriculture" includes "farming in all its branches", "harvesting of any agricultural or horticultural commodities", and "any practices \* \* \* performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market". Such phrases clearly include the activities held non-exempt by the District Court in this case, as all of such activities are essential to the growing and marketing of the farmer's crop.

Thus a sugar cane grower cannot grow his crops unless he digs and maintains ditches for draining his

cane fields, or unless he transports over the field roads on his farm to the cane fields the agricultural laborers, supplies and equipment needed to grow his crop and keeps such field roads in a usable condition, or unless he keeps in good condition the machinery and equipment necessary to grow his crop. Likewise the sugar cane farmer cannot market his cane unless he transports same to the processing mill and in that connection maintains and repairs his transporting facilities. To deny exemption to these activities is to render meaningless the agricultural exemption in the Act. Such activities are as much part of "farming" as are the planting of seed and the cultivation of land. Moreover, all such activities fall within the portion of the definition of "agriculture" exempting practices incident to and in conjunction with farming operations, for no activities could be more plainly incident to or in conjunction with farming operations than such activities. Again the farmer's activity of transporting sugar cane to the mill and maintaining in good repair the facilities used for such transporting is part of "harvesting". "Harvesting" has never meant simply the severance of the crop from the ground or the tree. It has always included "gathering in the crop". The transportation activity in question is simply such "gathering in" of the sugar cane crop.

Not only the statutory language of section 3(f) but the purpose of the agricultural exemption as well, as revealed by its legislative history, supports our position that the activities in question are exempt. Congress intended the exemption to be far-reaching (See *Addison v. Holly Hill Fruit Products*, 322 U.S. 607, 612) and to include all agriculture, so that no part of agriculture would be subjected to the costs that the Act imposes

upon industrial operations. 83 Cong. Rec. 9162-9163. It was felt that since the farmer's operations are governed largely by weather and other natural factors, the overtime obligations of the Act ought not be imposed upon him. The activities presently being discussed are as much governed by such natural factors as any other factors of the farmer's operation.

The case law and the administrative interpretations of the agricultural exemption by the Administrator of the Wage and Hour Division (hereinafter referred to as the Administrator) also fully support our position that the activities in question come within said exemption. All judicial decisions other than the one below have allowed the exemption to these activities and the Administrator's interpretations have consistently exempted such activities.

The court below denied exemption to these activities chiefly on the ground that in the case of appellant's operations such activities are highly mechanized. But as the courts have recognized, this is a wholly immaterial factor. *Damutz v. Pinchbeck*, 158 F. (2d) 882, 883 (C.C.A. 8). See also *Addison v. Holly Hill Fruit Products*, 322 U.S. 607, 612, 614 and *Miller Hatcheries v. Boyer*, 131 F. (2d) 283, 285 (C.C.A. 8). In Louisiana, as in Hawaii, such activities are mechanized. But so too are the plowing, cultivating and other field operations of the growers. To make the exemption dependent upon whether or not operations are mechanized is to inject a qualification which Congress did not see fit to write into the agricultural exemption. Nor has Congress seen fit since the passage of the Act to amend the exemption so as to write in such qualification despite repeated efforts by certain groups to have it do so.

Such efforts are fully explained in the brief filed with this court by appellant, Waialua Agricultural Company, Limited, at pp. 39-40.

We shall not elaborate further our argument that the activities hereinabove listed and discussed in Part I of our argument (*supra* p. 6) are exempt under the agricultural exemption in the Act. The brief for appellant, Waialua Agricultural Company, Limited, (pp. 15-50) has developed such arguments at length. We submit that all such arguments are sound and we join fully therein.

**II. *Employees of Processors of Sugar Cane, Who Transport Sugar Cane from the Farm Where Grown to the Processing Mill, Process the Cane into Sugar (But Not Refined Sugar) and Molasses, Temporarily Store, Load and Ship Same to Market, and Engage in Closely Related Operations, are Exempt from the Over-Time Provisions of the Act By Virtue of Section 7(c).***

As previously explained, in Louisiana some sugar cane is transported to the processing mill by narrow gauge railroad owned and operated by the mill. This normally occurs as follows: A large sugar cane plantation has a mill at which there is processed the cane grown on that plantation and also the cane grown by other growers who do not have any processing facilities. The plantation has a narrow gauge railroad over which it transports to the mill the cane that it grows and also cane grown by the independent growers. In order for such railroad to be usable, employees of the plantation must keep it in good repair.

After the cane reaches the mill it is processed into sugar and molasses and the sugar is bagged. The sugar



and molasses are then loaded and shipped to market or first temporarily stored and then loaded and shipped to market.

The court below denied the applicability of the section 7(c) exemption to (a) transportation of sugar cane to the mill by narrow gauge railroad; (b) repair and maintenance of equipment and facilities used in the processing of sugar cane into sugar and molasses, bagging sugar, and loading, storing and shipping sugar and molasses where such repair and maintenance are not performed in the mill building proper; (c) repair and maintenance of equipment and facilities used in connection with supplying power to the mill for cane processing; and (d) loading and shipment of sugar and molasses out of storage places, bins or tanks where the sugar and molasses have previously been temporarily stored. We contend that these holdings of the court below are erroneous and should be reversed. The language and legislative history of section 7(c) and the judicial decisions and administrative interpretations thereunder demonstrate beyond doubt that all the operations held non-exempt by the District Court under section 7(c) are in fact exempt.

Section 7(c) grants exemption from the overtime provisions of the Act to employees in any "place of employment" where their employer is engaged "in the processing of \* \* \* sugar cane \* \* \* into sugar (but not refined sugar) or into syrup". Thus, in order to secure exemption under section 7(c) a processor of sugar cane into sugar and molasses must show the following: (a) he is engaged in processing sugar cane into sugar (but not refined sugar) or molasses; (b) the employees for whom exemption is claimed work in the "place of

employment" where the employer is engaged in such processing. Both of these conditions obtain with respect to the employees of a sugar cane processor engaged in the activities held nonexempt by the District Court.

The transportation of sugar cane by the processor thereof by narrow gauge railroad to the mill, the repair and maintenance of the equipment and facilities used in such transportation, and the repair and maintenance of all the equipment and facilities used at the mill for the processing operation, including the power equipment and facilities, are an integral part of the processing of sugar cane into sugar and molasses. Without such activities there could be no sugar cane processing. In so far as repair work is concerned, this is true whether done at the mill building proper or done in a nearby shop.

Furthermore all of the activities in question are performed on the same premises. Employees who transport the sugar cane to the mill on the narrow gauge railroad make regularly recurring trips to and from the mill and must be considered attached thereto. In Louisiana the repair shop is usually in the same building as the mill, but even if, as in some cases, it is in a separate building, such building is very close to the mill and is functionally part of the processing plant. The term "place of employment" as used in section 7(c) of course means all the premises on which are located the buildings and facilities used in the "processing of \* \* \* sugar cane \* \* \* into sugar". Such term is obviously a broader term than the word "establishment" which Congress used in other sections of the Act (See sections 12 and 13(a)(10) and must therefore be accorded a broader meaning.



The legislative history of section 7(c) also shows that the activities in question are exempt thereunder. Such history is clear to the effect that the exemption for processing sugar cane into sugar and molasses was to be a full and absolute exemption. 83 Cong. Rec. 9254, 9266. This Congressional purpose would be ignored if exemption were to be denied the activities presently being discussed.

The case law under section 7(c) also supports our contention. In addition to the cases discussed on pp. 56-60 of the appellant's brief herein, the court's attention is directed to the following cases: *Walling v. Bridgeman-Russell Co.* (D. Minn. 1942) 6 Labor Cases § 61,422 (exemption in section 7(c) for the first processing of milk, skimmed milk, whey and cream into dairy products held applicable to employees making butter and cutting, printing and packing same); *Sugar Creek Creamery v. Walker & Baker*, 208 Ark. 639, 187 S.W. (2d) 178 (1945) (employees of company manufacturing milk into cheddar cheese and cream into butter held exempt under the section 7(c) dairy products exemption. One of the employees secured milk for the plant, and also worked in the plant unloading containers, testing and weighing cream, washing cans, taking the cheese curd out of the vat, etc.); *Armour v. Carpenter*, 193 Okla. 153, 141 Pac. (2d) 797 (1943); (employee working in combined creamery and poultry plant testing cream, purchasing poultry and issuing company checks in payment for cream and poultry held exempt the year around under the section 7(c) dairy products exemption with respect to his work on cream and exempt for 14 workweeks per year under the section 7(c) exemption for handling, etc. of poultry with respect to his activities on poultry.

The interpretations under section 7(c) issued by the Administrator also support our contention that the activities in question are exempt under that section.

The language and legislative history of section 7(c), and the case law and administrative interpretations thereunder, all show that the activities in question are exempt under section 7(c). We agree with and join in the arguments and authorities set forth on pp. 53-64 of appellant's brief.

### **CONCLUSION**

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

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